

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #10	CCRB Case #: 201800489	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/18/2018 4:24 PM	Location of Incident: 125th Street A/B/C/D Subway Station	Precinct: 26	18 Mo. SOL 7/18/2019	EO SOL 7/18/2019	
Date/Time CV Reported Fri, 01/19/2018 12:20 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 01/19/2018 12:20 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Antonio Andrade	16528	950006	TB DT03

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Amy Schenk	18232	959208	TB DT03

Officer(s)	Allegation	Investigator Recommendation
A.POM Antonio Andrade	Abuse: Police Officer Antonio Andrade stopped § 87(2)(b)	
B.POM Antonio Andrade	Abuse: Police Officer Antonio Andrade searched § 87(2)(b)'s wallet.	

## Case Summary

On January 19, 2018, § 87(2)(b) filed this complaint with the CCRB via the online website.

At approximately 4:24 p.m. on January 18, 2018, § 87(2)(b) entered the 125<sup>th</sup> Street subway station, located at the intersection of West 125<sup>th</sup> Street and St. Nicholas Avenue in Manhattan. § 87(2)(b) noticed two uniformed officers, PO Antonio Andrade and PO Amy Schenk of Transit District 3, standing past the turnstiles. § 87(2)(b) entered the subway by swiping his MetroCard at a turnstile. Once he passed through the turnstile, PO Andrade walked up to him and stopped him (**Allegation A: Abuse of Authority, stop –** § 87(2)(g) PO Andrade asked § 87(2)(b) to show the MetroCard that he had just used. § 87(2)(b) complied. PO Andrade asked § 87(2)(b) if he had any other MetroCards. § 87(2)(b) denied that he did. PO Andrade asked § 87(2)(b) if he could search his wallet. § 87(2)(b) initially refused, but later consented when PO Andrade insisted that he had the right to examine § 87(2)(b)'s wallet. § 87(2)(b) handed his wallet to PO Andrade, who went through its contents (**Allegation B: Abuse of Authority, search –** § 87(2)(g) PO Andrade then returned the wallet to § 87(2)(b) and told him that he was free to go. § 87(2)(b) left. He was not issued a summons or arrested during the incident.

No video footage was found from this incident.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Antonio Andrade stopped § 87(2)(b)**

**Allegation (B) Abuse of Authority: Police Officer Antonio Andrade searched § 87(2)(b)'s wallet.**

§ 87(2)(g)

It is undisputed that PO Andrade stopped § 87(2)(b) after he swiped his MetroCard and passed through the turnstile. He asked § 87(2)(b) to produce the card that he had just used in the turnstile. § 87(2)(b) showed him a standard MetroCard. PO Andrade then asked § 87(2)(b) if he had any additional MetroCards with him. § 87(2)(b) responded that he did not. PO Andrade asked § 87(2)(b) several times to give over his wallet in order to search it. § 87(2)(b) initially refused to do so, but eventually gave in and handed his wallet to PO Andrade. PO Andrade looked through the wallet. He did not find any other MetroCards inside the wallet. PO Andrade returned the wallet to § 87(2)(b) and told him that he was free to go. The stop was initiated solely by PO Andrade. PO Schenk did not speak during the incident.

§ 87(2)(b) was interviewed at the CCRB on January 30, 2018 (See Board Review #01: § 87(2)(b)'s Statement). He stated that he used a standard, regular-fare MetroCard to enter the turnstile. He denied that he used a reduced-fare or student MetroCard, or

that he was carrying any other MetroCards. After PO Andrade stopped him, § 87(2)(b) produced his standard MetroCard and identified it as the MetroCard that he had used in the turnstile. PO Andrade asked § 87(2)(b) twice for permission to search his wallet. § 87(2)(b) refused both times. PO Andrade then told § 87(2)(b) that he possessed the authority to search the wallet because he had effected a “legal stop.” He then ordered § 87(2)(b) to hand over his wallet. § 87(2)(b) was unsure of whether PO Andrade did have sufficient legal authority, but he complied with the order and gave over his wallet to PO Andrade.

The investigation identified § 87(2)(b) as the MTA employee who was working in the station’s toll booth at the time of the incident. § 87(2)(b) provided a telephone statement on March 6, 2018 (See Board Review #02: § 87(2)(b) Statement). She denied any knowledge of the incident. She did not recall witnessing the police stop or search any individuals at the time of the incident.

PO Andrade was interviewed at the CCRB on April 6, 2018 (See Board Review #03: PO Andrade’s Statement). PO Andrade stated that his attention was drawn to § 87(2)(b) due to an indicator light that is displayed on the turnstile. The light is on the turnstile’s column, facing into the subway system where PO Andrade was standing. The light displays different colors depending on the type of MetroCard used to go through the turnstile. When § 87(2)(b) went through the turnstile, the indicator light turned a yellowish white color. This indicated that § 87(2)(b) had used a student MetroCard in the turnstile. Since § 87(2)(b) a § 87(2)(b) male, appeared to be too old to be in legal possession of a student MetroCard, PO Andrade concluded that he had improperly gained access to the subway. PO Andrade did not suspect § 87(2)(b) of committing any other offenses. § 87(2)(b) showed PO Andrade his standard MetroCard and claimed that he had used it to enter the turnstile. Since a standard MetroCard would not have displayed the light on the turnstile, PO Andrade suspected that § 87(2)(b) was lying and that he had a student MetroCard on his person. He asked to look through § 87(2)(b)’s wallet in order to find the suspected student MetroCard. He asked § 87(2)(b) several times for his consent to search the wallet, but § 87(2)(b) refused. PO Andrade did not recall how many times he requested § 87(2)(b)’s consent. Eventually, § 87(2)(b) handed his wallet over.

PO Schenk was interviewed at the CCRB on April 6, 2018 (See Board Review #04: PO Schenk’s Statement). PO Schenk stated that since she was not watching the turnstiles when § 87(2)(b) passed through, she did not know if any lights were displayed on the turnstile. She did not recall PO Andrade explaining why he approached § 87(2)(b) at the time of the incident. PO Andrade later told her that he had seen a light on the turnstile indicating that § 87(2)(b) had used a student MetroCard.

An officer requires a founded suspicion that criminality is afoot in order to ask intrusive or accusatory questions of a civilian. A request to search a civilian’s person is an accusatory question. Consent to search a civilian’s possessions cannot be considered valid if it was the product of an improper police inquiry. New York v. Hollman, 79 N.Y.2d 181 (1992) (See Board Review #05: Legal Reference).

§ 87(2)(g)

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#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (See Board Review #06: Civilian CCRB History).
- PO Andrade has been a member of the service for six years and this is the first CCRB complaint to which he has been a subject.

#### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- A Notice of Claim request was submitted to the NYC Office of the Comptroller on April 8, 2018. It will be included in the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date